

OTS

ORIGINAL**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

2009 JUL -3 PM 2:29

CLERK'S OFFICE

AMERICAN AIRLINES, INC.,

Plaintiff,

-v.-

GOOGLE INC.,

Defendant.

No. 4:07-CV-487-A

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, American Airlines, Inc. ("American"), moves for partial summary judgment, and pursuant to Local Rule 56.3, American respectfully shows the Court as follows:

**I.
SUMMARY**

Defendant, Google Inc. ("Google"), asserted 11 affirmative defenses in its answer. American moves for summary judgment on eight of Google's affirmative defenses: justification, unclean hands, laches, fair use, nominative use, failure to mitigate, estoppel, and waiver. Each of these affirmative defenses fails because Google does not have any evidence to support one or more of the essential elements required to prove those affirmative defenses. American more specifically identifies in its brief each such element of each affirmative defense on which summary judgment is sought.

II.
LEGAL AND FACTUAL GROUNDS
ON WHICH AMERICAN RELIES

The legal and/or factual grounds on which American relies are set forth in detail in American's brief.

III.
APPENDIX

American's motion and brief are accompanied by an appendix containing the evidence on which American relies. The brief contains cites to the appendix for each assertion made by American concerning the summary judgment evidence.

IV.
PRAYER

American respectfully requests that the Court grant its motion for partial summary judgment and dismiss Google's affirmative defenses of justification, unclean hands, laches, fair use, nominative use, failure to mitigate, estoppel, and waiver.

Respectfully submitted,

Lars L. Berg

Dee J. Kelly (State Bar No. 11217000)
Dee J. Kelly, Jr. (State Bar No. 11217250)
Lars L. Berg (State Bar No. 00787072)
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Phone: (817) 332-2500
Fax: (817) 878-9280

Frederick Brown (admitted *pro hac vice*)
George A. Nicoud III (State Bar No. 15017875)
GIBSON, DUNN & CRUTCHER LLP
One Montgomery St., Suite 3100
San Francisco, CA 94104
Phone: (415) 393-8200
Fax: (415) 986-5309

Terence P. Ross (admitted *pro hac vice*)
Howard S. Hogan (admitted *pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Phone: (202) 955-8500
Fax: (202) 467-0539

Attorneys for Plaintiff American Airlines, Inc.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered on the 3rd day of July, 2008 to Defendant's counsel, as follows:

Via CMRRR #7007 0710 0000 0927 8693

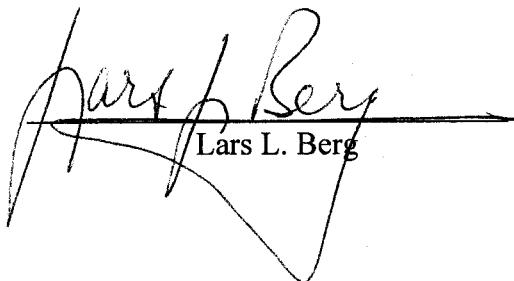
and Email

Joseph F. Cleveland, Jr.
BRACKETT & ELLIS P.C.
100 Main Street
Fort Worth, TX 76102-3090

Via CMRRR #7007 0710 0000 0927 8709

and Email

Michael H. Page (Pro Hac Vice)
Klaus H. Hamm (Pro Hac Vice)
Benjamin Berkowitz (Pro Hac Vice)
KEKER & VAN NEST LLP
710 Sansome Street
San Francisco, CA 94111-1704



Lars L. Berg